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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2088 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHEELABEN W/O. RAHULBHAI BABUBHAI MADRASI

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for the Petitioner.

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

The petitioner is a lady detenue.

By filing this petition, the petitioner-detenue

has challenged her detention order dated 22.1.2004. By the impugned order, the petitioner is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order of detention, the petitioner is also served with the grounds of detention.

In the grounds of detention, there is a reference about one registered case against the petitioner. The said case is filed under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor.

The Authority, after considering the said case and after recording the statements of witnesses, whose names have not been disclosed to the petitioner, detained her under PASA. The said order of detention is impugned in this petition.

The said case was registered against the petitioner on 22.10.2003 and after three months, the order of detention is passed. It is submitted that in view of the delay in passing the order of detention after the last incident, the order of detention is required to be set aside as the subjective satisfaction is vitiated. It is submitted that when the registered case was already on record, it was not necessary to wait for such a long time. It is submitted that only in order to cover up delay, the alleged statements of witnesses have been recorded at a later point of time and the names of the witnesses have not been disclosed to the petitioner. In this connection, the learned Advocate for the petitioner has relied upon the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed, in paragraph 21, as under :-

> " ... ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I

> have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
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> ... ... ...."

Considering the aforesaid position, in my view, in view of the delay in passing the detention order, and in view of the judgment of the learned single Judge referred to above, the order of detention is required to be set aside on the aforesaid ground.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenue be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

( P.B. Majmudar, J. )

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(apj)